

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF ILLINOIS**

**IN RE: YASMIN AND
YAZ(DROSPIRENONE) MARKETING,
SALES PRACTICES AND PRODUCTS
LIABILITY LITIGATION**

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3:09-md-02100-DRH-PMF

MDL No. 2100

This Document Relates to: All Cases

**CASE MANAGEMENT ORDER NO. 76
ATE Settlement Implementation**

This Court is advised that Bayer HealthCare Pharmaceuticals Inc. (“BHCP”) and a committee of plaintiffs’ counsel appointed by this Court in cooperation with the state court judges in the Pennsylvania, New Jersey and California coordinated proceedings (“Negotiating Plaintiffs’ Counsel” or “NPC”) have negotiated a Settlement Agreement (“Agreement”) to resolve claims involving alleged arterial thromboembolism (“ATE”) injuries. The Agreement is attached as Exhibit A to this Order. The Agreement establishes a voluntary program (the “ATE Resolution Program” or “Program”) to settle the claims of Claimants alleging ATE Injuries, as specifically defined in the Agreement, either alone or in combination with some other injury.

I. AUTHORITY OF COURT TO OVERSEE SETTLEMENT

This Court has authority to preside over and manage various aspects of the Agreement and the Program, including, but not limited to, the entry of Orders establishing time frames for the completion of acts defined in the Agreement. Fed. R. Civ. P. 16(a)(5), (d); *In re Vioxx Prods. Liab. Litig.*, 650 F. Supp. 2d 549 (E.D. La. 2009); *In re Propulsid Prods. Liab. Litig.*, 2004 WL 305816 (E.D. La. 2004). The instructions herein are to be construed as the orders of this Court.

II. FILED CASES

Consistent with the terms of the Agreement, Claimants alleging an ATE Injury after use of drospirenone-containing oral contraceptives manufactured by Bayer or manufactured or marketed by Barr Laboratories, Inc. or Teva Pharmaceuticals USA, Inc. (collectively, “DCOCs”) with cases pending in any court on or before the Execution Date of the Agreement are eligible to participate in the Program. All Claimants alleging an ATE Injury with cases pending in MDL No. 2100 as of the date of this Order shall be given notice of this Order and of the Agreement executed by BHCP and the NPC. This Order shall be entered in this Court’s master docket for MDL No. 2100 and counsel in individual cases that are part of this MDL shall further be notified electronically by Plaintiffs’ Lead and Liaison Counsel appointed by this Court within twenty-four (24) hours.

Claimants alleging an ATE injury after use of a DCOC with cases pending on or before the Execution Date of the Agreement who wish to

enroll in the Program and be bound by the terms of the Agreement must submit the “Notice of Intent to Opt In Form,” attached as Exhibit B to this Order (Appendix B to the Agreement) and available at <http://www.ilsd.uscourts.gov/mdl/mdl2100.aspx>, on or before the “Opt-In Deadline” set forth in this Order (and as may be extended as applicable under the terms of the Agreement). Claimants alleging an ATE Injury who timely submit a “Notice of Intent to Opt In Form” shall submit a complete Claim Package, as detailed in the Agreement, by the Claim Package Deadline, extended as may be appropriate to the Cure Deadline, both set forth in this Order, to be eligible for an award under the Program.

Claimants with filed cases who allege an ATE Injury and submit a “Notice of Intent to Opt In Form” but who do not timely submit a complete Claim Package will not be eligible to receive any compensation under the Program and will be subject to a motion by BHCP for dismissal with prejudice following the Cure Deadline as set forth in the Agreement.

III. UNFILED CLAIMS AND CASES FILED AFTER THE EXECUTION DATE

Claimants who allege an (1) ATE Injury after use of DCOCs, (2) retained counsel on or before the Execution Date of the Agreement, and (3) do not have a case pending in any court on or before the Execution Date of the Agreement (Eligible Unfiled Claimants) are eligible to participate in the Program. Eligible Unfiled Claimants who wish to enroll in the Program and be bound by the terms of the Agreement must submit, on or before the “Opt In Deadline” set

forth in this Order (and extended as applicable under the terms of the Agreement), the following:

1. A “Notice of Intent to Opt In Form,” attached as Exhibit B to this Order (Appendix B to the Agreement) and available at <http://www.ilsd.uscourts.gov/mdl/md12100.aspx>;
2. An executed “Release” attached as Exhibit C to this Order (Appendix C-1 to the Agreement) and available at <http://www.ilsd.uscourts.gov/mdl/md12100.aspx>, or in the event that a Derivative Claim is asserted, an executed “Derivative Release” attached as Exhibit D to this Order (Appendix C-2 to the Agreement) and available at <http://www.ilsd.uscourts.gov/mdl/md12100.aspx>; and
3. For Eligible Unfiled Claimants not included on the Case Census, a “Declaration of Counsel,” attached as Exhibit E to this Order (Appendix D to the Agreement) and available at <http://www.ilsd.uscourts.gov/mdl/md12100.aspx>, certifying under penalty of perjury that the Eligible Unfiled Claimant (or her personal representative) retained counsel (or his or her law firm) on or before the Execution Date of the Agreement.

Eligible Unfiled Claimants who submit the required documents to become eligible for the Program shall submit a complete Claim Package, as detailed in the Agreement, by the Claim Package Deadline, extended as

appropriate to the Cure Deadline, to be eligible for an award under the Program.

Eligible Unfiled Claimants who submit the required documents to become eligible for the Program, but who do not timely submit a complete Claim Package, will not be eligible to receive any compensation under the Program.

IV. KEY SETTLEMENT PROGRAM DEADLINES

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| <p><u>Opt In Period:</u></p> <p>August 13, 2015 to 11:59 p.m. C.T. on September 12, 2015</p> <p><u>Opt In Deadline:</u></p> <p>11:59 p.m. C.T. on September 12, 2015</p> | <p>The Claims Administrator will begin taking submission of Opt In materials at www.yazofficialatesettlement.com on August 13, 2015.</p> <p>Within the “Opt In Period,” (1) Claimants alleging an ATE Injury with cases pending in any court may elect to participate in the Program by submitting the “Notice of Intent to Opt In Form,” and (2) Eligible Unfiled Claimants may elect to participate in the Program by submitting the “Notice of Intent to Opt In Form,” “Release” (or “Derivative Release” if a Derivative Claim is asserted), and if not included on the Case Census, a “Declaration of Counsel.”</p> <p>If the request is made before the expiration of the “Opt In Deadline,” Claimants with both filed cases and unfiled claims shall be entitled to a one-time extension of twenty-one (21) days from the Claims Administrator. A request for an additional extension of fourteen (14) days may be made to the Special Master, which is to be granted only upon a showing of “good cause” as detailed in the Agreement.</p> |
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| <u>Claim Package Deadline:</u> Thirty (30) days after the later of the date of a Program Participant's Notice of Enrollment Status or decision by the Special Master on the Program Participant's Enrollment Status | <p>Window of time in which Program Participants may submit Claim Packages seeking an award under the Program.</p> <p>If the request is made before the expiration of the "Claim Package Deadline," Claimants shall be entitled to a one-time extension of twenty-one (21) days from the Claims Administrator. A request for an additional extension of fourteen (14) days may be made to the Special Master, which is to be granted only upon a showing of "good cause" as detailed in the Agreement.</p> |
| <u>The Cure Deadline:</u> Thirty (30) days after Notice of Incomplete Claim sent by Claims Administrator | <p>Date by which a Program Participant must cure deficiencies in her Claim Package.</p> |
| <u>The Effective Date:</u> 11:59 p.m. C.T. on the 45th day following receipt of the last Claim Package | <p>Date by which BHCP may exercise its Walk Away Right under the Agreement. If BHCP's Walk Away Right under the Agreement expires without previously having been exercised, this date shall become the Effective Date of the Agreement.</p> |

V. FORM SUBMISSION

The "Notice of Intent to Opt In Form" and, as the context requires, Release and Declaration of Counsel must timely be submitted to the Claims Administrator at www.yazofficialatesettlement.com. Any Claimant who is unable to use the online system shall contact the Claims Administrator and the Claims Administrator shall make such accommodations as are necessary to meet the needs of the Claimant and/or Claimant's Counsel.

VI. APPOINTMENT OF SPECIAL MASTER

The Court, by this Order, appoints Randi Ellis, Esq. and Judge Daniel Stack (Ret.) as Special Masters for the purpose of making decisions outlined in

the Agreement. Any successor to the initial Special Masters shall fulfill the same functions from and after the date of their succession and shall be bound by the determinations made by their predecessor(s) to date.

IT IS SO ORDERED.

Signed this 3rd day of August, 2015.

 Digitally signed by
David R. Herndon
Date: 2015.08.03
11:43:42 -05'00'



United States District Court